

**REMARKS****A. 35 U.S.C. § 101**

In the Office Action of August 9, 2006, claims 1-15 were rejected under 35 U.S.C. § 101 for lacking a "useful, concrete, tangible result." Applicant traverses the rejection for at least the same reasons given in his Amendment filed on November 9, 2006, the entire contents of which are incorporated herein by reference.

On December 7, 2006, Examiner Washburn contacted the undersigned and indicated that he was intending to repeat his rejection of claims 1-15. In a later message to Examiner Washburn, the undersigned pointed to new claims 24-28 as possibly addressing Examiner Washburn's concerns. On December 12, 2006, Examiner Washburn left a message with the undersigned indicating that new claims 24, 26 and 27 presented in Applicant's Amendment filed on November 9, 2006 would be allowable subject to approval by his supervisor. On December 20, 2006, Examiner Washburn left a message with the undersigned indicating that claims as being presented in the present Amendment would overcome the rejection under 35 U.S.C. § 101.

In order to expedite prosecution of the present application, claim 1 has been canceled rendering its rejection moot. In addition, claim 24 has been amended so as to be in independent form and so should be allowable per Examiner Washburn's comments above. Claims 2-4 have been amended so as to depend from claim 24 and so dependent claims 2-15 depend directly or indirectly on claim 24. Accordingly, the rejections of claims 2-15 should be withdrawn and claims 2-15 should be allowed for at least the same reasons that claim 24 should be allowed.

As mentioned above, claims 2-4 have been amended so as to depend from claim 24. Since the amendments are being made for the sole reason to provide additional coverage for the method of claim 24, the amendments are being presented for reasons not related to patentability as defined

in *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) (*en banc*), *overruled in part*, 535 U.S. 722 (2002) (hereinafter *Festo I*).

**B. Claims 16-23**

Applicant notes with appreciation that claims 16-23 have been allowed. It is noted that the Office Action contains a statement of reasons for the allowance of claim 16. Applicant traverses the statement in that there are other and broader reasons for the allowance of the claims.

**C. Claim 24-28**

Claims 24-26 recite generating an output signal (claim 24), storing a value (claim 25) and issuing a numerical value (claim 26) associated with "said determined value for said chronological progression of said change in angular inclinations of said scanning device" as recited in claim 1. Claim 27 recites graphically representing "said determined value for said chronological progression of said change in angular inclinations of said scanning device" as recited in claim 1. Claim 28 recites "making said determined value for said chronological progression of said change in angular inclinations of said scanning device available to a user of said linear position measuring system." As suggested in the Office Action, the recited processes of claims 24-28 provide "concrete, tangible useful results" and so the claims should be indicated to be allowable.

Despite the allowability of the claims, claims 25 and 28 have been canceled in order to expedite prosecution of the application by having claims 24, 26 and 27 granted in a patent.

As mentioned previously, claim 24 has been amended so as to be in independent form. Claims 26 and 27 have also been amended so as to be in independent form. To the extent that the amendments incorporate subject matter that was inherently present in the previous version of the claims, the amendments are not related to patentability. *See, Festo Corporation v. Shoketsu*

*Kinzoku Kogyo Kabushiki Co., Ltd*, 535 U.S. 722 (2002).

**D. New Claims 29-54**

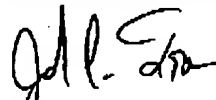
Note that claims 29-54 have been added solely to provide additional coverage for the methods of claims 26 and 27 and so the claims are being presented for reasons not related to patentability as defined in *Festo I*.

Note that claims 29-41 correspond to claims 2-8 and 10-15, respectively. Similarly, claims 42-54 correspond to claims 2-8 and 10-15, respectively.

**CONCLUSION**

In view of the arguments above, Applicant respectfully submits that all of the pending claims 2-24, 26, 27 and 29-54 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

Respectfully submitted,



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Dated: December 22, 2006